

The Cedar Tree Press, Inc. and Graphics Communications International Union, Local 14-M, AFL-CIO. Case 4-CA-25843

July 24, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Pursuant to a charge filed on March 14, 1997, the General Counsel of the National Labor Relations Board issued a complaint on April 16, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 4-RC-18973. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting an affirmative defense.

On June 27, 1997, the General Counsel filed a Motion for Summary Judgment. On June 30, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 14, 1997, the Respondent filed a response and Cross-Motion for Summary Judgment.

Ruling on Motion for Summary Judgment

In its answer and in its response the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its contention in the representation proceeding that the Regional Director abused his discretion by refusing to issue an absentee mail ballot to an eligible voter who was on vacation the day of the election.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.¹ We therefore find that the Respondent has

¹ In its response, the Respondent now also cites the Board's recent mail-ballot decisions in *London's Farm Dairy*, 323 NLRB 1057 (1997); and *Reynolds Wheels International*, 323 NLRB 1062 (1997), which were issued after the decision in the representation proceeding, and contends that these recent decisions create special circumstances warranting reexamination of the decision in the representation proceeding. We reject the Respondent's contention as those cases, like the earlier cases cited by the Respondent in the representation proceeding (*Shepard Convention Services*, 314 NLRB 689 (1994), enf. denied 85 F.3d 671 (D.C. Cir. 1996) and *Oneida County Community Action Agency*, 317 NLRB 852 (1995)), involved the

not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the General Counsel's Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation, with a plant in Wilmington, Delaware, has been engaged in commercial printing. During the 12-month period preceding the issuance of the complaint, the Respondent in conducting its business operations described above, purchased and received at its Wilmington, Delaware plant, goods, materials and supplies valued in excess of \$50,000 directly from points outside the State of Delaware. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held January 8, 1997, the Union was certified on February 7, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time press persons, feeder operators, output/MAC operators, strippers, plate makers, camera persons, scanners and proofers, warehouse, maintenance and bindery employees and truckdrivers, employed at the Respondent's Wilmington, Delaware, facility, excluding all other employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

issue of when a mail ballot election is appropriate, rather than the issue raised in the instant case, which is whether absentee ballots should be provided to employees who are on vacation during a manual election.

² Accordingly, we deny the Respondent's Cross-Motion for Summary Judgment. In the underlying case, Chairman Gould would have granted the Respondent's request for review to reconsider the Board's policies with respect to absentee ballots. However, he agrees with his colleagues that no new matters or special circumstances have been raised in the instant "technical" 8(a)(5) case warranting reexamination of the Board's decision in the representation proceeding, and that the General Counsel's Motion for Summary Judgment should therefore be granted.

B. *Refusal to Bargain*

Since about February 12, 1997, the Union has requested the Respondent to bargain, and, since the same date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after February 12, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, The Cedar Tree Press, Inc., Wilmington, Delaware, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Graphic Communications International Union, Local 14-M, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time press persons, feeder operators, output/MAC operators, strippers,

plate makers, camera persons, scanners and proofers, warehouse, maintenance and bindery employees and truckdrivers, employed at the Respondent's Wilmington, Delaware, facility, excluding all other employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Wilmington, Delaware, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 4 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 14, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Graphic Communications International Union, Local 14-M, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time press persons, feeder operators, output/MAC operators, strippers, plate makers, camera persons, scanners and proofers, warehouse, maintenance and bindery employees and truckdrivers, employed at our Wilming-

ton, Delaware, facility, excluding all other employees, guards and supervisors as defined in the Act.

THE CEDAR TREE PRESS, INC.